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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 11.12.2024*+ **W.P.(C) 3171/2019 & CM APPL. 14497/2019****TRIVENI ENGINEERING AND INDUSTRIES****LTD.****.....Petitioner**Through: **Mr. Anunya Mehta & Mr. Vidhan
Malik, Advocates.**

versus

VIJAY BHATIA AND ORS.**.....Respondents**Through: **Mr. Jasbir Singh Malik, Mr. Balraj
Tanwar & Ms. Rhythm Bhardwaj,
Advocates for R-1
Mr. Dhananjaya Mishra & Mr.
Navneet Dogra, Advs. for R-2 & 3.****CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The short issue that has arisen in the present Petition is that the orders dated 21.12.2018 and 26.12.2018 [hereinafter referred to as 'Impugned Orders'] passed by the Micro and Small Enterprises Facilitation Council, Govt. of NCT of Delhi [hereinafter referred to as the "Facilitation Council"] established under Section 20 of the of the Micro, Small and Medium Enterprises Development Act, 2006 [hereinafter referred to as the "MSMED Act"] were passed without any jurisdiction.

2. The grievance of the Petitioner is that the Facilitation Council referred



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the disputes raised by Respondent No.1 to the Delhi International Arbitration Centre [hereinafter referred to as “DIAC”] for conducting arbitration proceedings under the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the “Arbitration Act”].

3. Briefly, the facts are that the Petitioner issued a work order on 20.10.2011 to Frontier Civil Construction, the sole proprietorship of Respondent No.1, for constructing a 144 MLD Water Treatment Plant at Sikandra, Agra. The approximate value of the work order was Rs. 4,48,34,805/-. Subsequently, disputes arose between the parties, for which the Respondent No.1 invoked the arbitration clause between the parties. The Petitioner initially appointed a Sole Arbitrator on 04.03.2014. However, since this appointment was challenged by the Respondent No.1, another Sole Arbitrator was appointed by the Petitioner, which was also objected to by the Respondent No.1.

4. Subsequently, the Respondent No.1 filed an Application under Section 11 (4) of Arbitration Act in the Allahabad High Court, for the appointment of an Arbitrator which Application, was dismissed for non-prosecution on 29.04.201. Thereafter, the Respondent No.1 approached the Facilitation Council to adjudicate the disputes amongst the Petitioner and Respondent No.1. Although an Application for restoration of the Section 11 Petition under Arbitration Act was filed in the Court was subsequently filed by the Respondent No.1, simultaneously the Respondent No.1 also on 10.07.2017 filed a Petition under Section 18 of the MSMED Act before the Facilitation Council, for the adjudication of the disputes pending *inter se* the



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parties.

5. As stated above, by the Orders dated 21.12.2018 and 26.12.2018 passed under the Section 18 (3) of MSMED Act, the disputes pending *inter se* the parties were referred to the DIAC under the provisions of Section 18 (3) of MSMED Act. The Impugned Orders set out that since all efforts for conciliation had failed, the Facilitation Council decided to refer the case to the DIAC for initiation of arbitration proceedings.

6. The learned Counsel of the Petitioner submits that the contract executed between the parties was executed on 20.10.2011 and the work under the contract was completed before 15.10.2013. After the expiry of the contract, the Respondent No.1, registered itself under the MSMED Act on 20.05.2017. Learned Counsel for the Petitioner submits that it is settled law that in order to avail the benefits under the MSMED Act, the concerned parties require to register itself under the MSMED Act prior to entering into the contract with the party concerned. Reliance is placed on the judgments of the Supreme Court in *Silpi Industries Etc. v. Kerala State Road Transport Corporation and Anr.*¹; *Vaishno Enterprises v. Hamilton Medical AG and Anr.*² and *Grand Mumtaz Hotel and Resort Through its Managing Partner Mr. Wasim Mushtaq v. Deputy Commissioner North East Government of NCT of Delhi and Others*³.

7. The learned Counsel of the Petitioner further draws the attention of the Court, to the Paragraph 26 of the *Silpi Industries* case, to submit that the

¹ 2021 SCC OnLine 439

² 2022 SCC OnLine SC 355

³ 2023 SCC OnLine Del 3891



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seller should have registered under the provisions of the MSMED Act, as on the date of entering into the concerned contract, to avail the provisions of the MSMED Act.

8. The learned Counsel of the Respondent No.1 does not dispute this position of the law, however submits that the judgements relied upon by the Petitioner have been passed after the filing of the present Writ Petition, and after from the time when Respondent approached the Facilitation Council, thus are inapplicable to the present case.

9. The learned Counsel of the Respondent No.1 further submits that the Petitioner, despite raising objections has participated in the proceedings before the Facilitation Council, pursuant to which the Impugned Orders have been passed. As such the Petitioner has the remedy to file an appeal against the Impugned Orders. Thus, as an alternative remedy exists, the present Writ Petition is not maintainable.

10. This Court is unable to agree with the contentions of the learned Counsel for Respondent No.1. The Supreme Court in the ***Silpi Industries*** case while dealing with a similar situation held that to avail the benefits of the provisions of MSMED Act, it is necessary to have a registration under the MSMED Act prior to entering such agreement. It was held that a party cannot become a micro or small enterprise or supplier to claim benefits within the meaning of the MSMED Act and claim retrospective benefits under the MSMED Act. The relevant extract of ***Silpi Industries*** case is set out below:

“26. Though the appellant claims the benefit of provisions under MSMED



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Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of GE T&D India Ltd. v. Reliable Engineering Projects and Marketing , but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. **In the present case, undisputed position is that the supplies were concluded prior to registration of supplier.** The said judgment of Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. **In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract.** In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of appellant as the unit under MSMED Act, 2006. **By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent.** The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of good and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

[Emphasis Supplied]

11. This view has been reiterated in another judgment passed by the



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Supreme Court in *Vaishno Enterprises* case as well.

12. The Supreme Court in the *Grand Mumtaz Hotel* case has further clarified the *Silpi Industries* case that registration of an entity under the MSMED Act, after the contract has been executed and the services have been rendered, cannot be given to entity retrospectively. The relevant extract of *Grand Mumtaz Hotel* case is as follows:

“24. The decisions in Silpi Industries (supra) and Gujarat State Civil Supplies Corporation Ltd. (supra) leave no manner of doubt that the registration of an entity under the MSMED Act, 2006 after the contract is executed and that too after the services have been rendered, cannot give benefit of the provisions of the Act, to such entity. The registration under the Act, would apply only prospectively and not retrospectively. After considering these two decisions of the Supreme Court, this Court in W.P.(C)9608/2022 titled Malani Construction Company v. Delhi International Arbitration Centre vide order dated 16th March, 2023 observed as under:

“13. The ratio of these two judgments is clear to the effect that if the registration under the MSMED Act, 2006 was obtained subsequently, the benefits under the said Act would not apply. Even in a situation where some portion of the goods/services are supplied prior to registration and some are supplied post registration, the Act would apply, depending on the facts, only qua the goods and services which are supplied subsequent to the registration.

14. The Supreme Court has further clarified that this issue can be decided by the MSEFC or the institution acting as an arbitral tribunal under the MSMED Act, 2006.”

[Emphasis Supplied]

12.1 It is not disputed by the learned Counsel for the Respondent No.1 that the contract was entered into and completed prior to the registration by the Respondent No.1 under the MSMED Act. The only ground taken by the Respondent No.1 is that the judgments have no application in the present case since these have been passed after the filing of the present Petition.



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This contention of the learned Counsel for the Respondent No.1 is misconceived. The MSMED Act was enacted in the year 2006, and these provisions were contained therein. The judgments cited have only interpreted the provisions of the MSMED Act and not laid down any new law.

13. So far as concerns the other contention of the Respondent No.1 that the Petitioner submitted to the jurisdiction of the Facilitation Council, and hence, cannot raise an objection at this stage. The reading of the Impugned Order itself shows that even before the Facilitation Council, the Petitioner had raised a plea that the claim is not maintainable and that the Facilitation Council does not have the jurisdiction to entertain these proceedings.

14. For the reasons as stated above, the Petition is allowed and the Impugned Orders dated 21.12.2018 and 26.12.2018 are set aside. Pending Application also stands closed.

TARA VITASTA GANJU, J

DECEMBER 11, 2024/ ha

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